

Before the  
Federal Communications Commission  
Washington, D.C. 20554

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In the Matter of	)	EB Docket No. 02-21
	)	
<b>Peninsula Communications, Inc.</b>	)	
	)	File No. EB 01-IH-0609
Licensee of stations	)	FRN: 0001-5712-15
KGTL, Homer, Alaska;	)	Facility ID Nos. 52152
KXBA(FM), Nikiski, Alaska;	)	86717
KWVV-FM, Homer, Alaska; and	)	52145
KPEN-FM, Soldotna, Alaska.	)	52149
	)	
Licensee of FM translator stations	)	
K292ED, Kachemak City, Alaska;	)	52150
K285DU, Homer, Alaska;	)	52157
K285EG and K272DG, Seward, Alaska	)	52158 and 52160
	)	
Former licensee of FM translator stations	)	
K285EF, Kenai, Alaska;	)	
K283AB, Kenai/Soldotna, Alaska;	)	
K257DB, Anchor Point, Alaska;	)	
K265CK, Kachemak City, Alaska;	)	
K272CN, Homer, Alaska; and	)	
K274AB and K285AA, Kodiak, Alaska	)	

**OFFICIAL NOTICE EXHIBITS**  
**SUBMITTED BY THE ENFORCEMENT BUREAU**

Number, Title and Description	# of Pages
1. <i>Peninsula Communications, Inc.</i> (Memorandum Opinion and Order) FCC 81-484, released January 11, 1982, 50 RR 2d 1135	3
2. <i>Amendment of Part 74 of the Commission's Rules Concerning FM Translator Stations</i> (Notice of Inquiry), FCC 88-120, released June 2, 1988, 3 FCC Rcd 3664	13
3. <i>Amendment of Part 74 of the Commission's Rules Concerning FM Translator Stations</i> (Notice of Proposed Rule Making), FCC 90-93, released March 28, 1990, 5 FCC Rcd 2106	30
4. <i>Amendment of Part 74 of the Commission's Rules Concerning FM Translator Stations</i> (Report and Order), FCC 90-375, released December 4, 1990, 5 FCC Rcd 7212	36

5. Letter from Alan J. Schneider, Chief, Auxiliary Services Branch,  
to Peninsula Communications, Inc., dated February 18, 1992 2
6. *Amendment of Part 74 of the Commission's Rules Concerning FM  
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FCC 93-338, released July 28, 1993, 8 FCC Rcd 5093 11
7. Letter from Linda Blair, Acting Chief, Audio Services Division, to  
Peninsula Communications, Inc., dated March 4, 1996 3
8. Letter from Linda Blair, Chief, Audio Services Division, to  
Jeffrey D. Southmayd, Esq., dated September 11, 1996 10
9. Letter from Linda Blair, Chief, Audio Services Division, to  
Jeffrey D. Southmayd, Esq., dated June 17, 1997 3
10. Letter from Linda Blair, Chief, Audio Services Division, to  
Jeffrey D. Southmayd, Esq., dated November 6, 1997 5
11. *Peninsula Communications, Inc.* (Memorandum Opinion and  
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13. *Peninsula Communications, Inc.* (Memorandum Opinion and  
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14. *Peninsula Communications, Inc.* (Notice of Apparent Liability for  
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15. *United States of America v. Peninsula Communications, Inc.* (Order),  
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16. *United States of America v. Peninsula Communications, Inc.* (Order),  
Case No. A-01-207 CV (JWS) (D. AK filed October 17, 2001 2
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20. *Peninsula Communications, Inc. v. FCC* (Order), Case No. 01-1273, 1  
(D.C. Cir. filed August 13, 2002)

# **OFFICIAL NOTICES**

**Ex. Nos. 1 - 20**

1



would be able to use their SCA for the same purposes that commercial stations could. This would include the recently authorized non-broadcasting use of a commercial FM station's SCA for utility load management. See the Report and Order in BC Docket 81-352, adopted December 17, 1981 [50 RR 2d1169].

4. Therefore it is ordered that this proceeding is terminated.

FCC 81-484  
30270

In re Petition of	)	
PENINSULA COMMUNICATIONS, INC.	)	BPTT-790906ID
Homer, Alaska	)	
To Terminate Operation of K265AG,	)	
FM Broadcast Translator, Licensed	)	
to KSRM, Inc.	)	

Adopted: October 1, 1981  
Released: January 11, 1982

[§54.1232] Termination of translator station denied.

A Homer, Alaska, FM station's petition to terminate operation of an FM translator rebroadcasting a Kenai, Alaska FM signal to Homer is denied. While Homer was beyond the Kenai station's 1mV/m contour, and termination of the translator was therefore permissible under §74.1232(d) of the rules, the termination provisions relating to translators are not mandatory, but permissive, actuated only upon a showing of good cause; the Homer station's allegation that continued operation of the translator was likely to cause the economic demise of the petitioner was speculative and unsupported, and the Homer listening public was clearly benefited by the availability of two stations rather than one. Peninsula Communications, Inc., 50 RR 2d 1135 [1982].

MEMORANDUM OPINION AND ORDER

By the Commission:

1. Before the Commission for consideration are (1) the captioned petition filed by Peninsula Communications, Inc. ("Peninsula"), licensee of KGTL-FM, Homer, Alaska, to terminate operation of FM Translator Station K265AG in Homer; (2) Opposition to the Petition to Terminate filed by KSRM, Inc., licensee of Translator Station K265AG; (3) Reply to Opposition to Petition to Terminate; and (4) various responsive and supplementary pleadings. 1/

2. In January 1979, KSRM, Inc., licensee of KQOK-FM, Kenai, Alaska, commenced operation of an FM translator Station in Homer, Alaska, rebroadcasting the signal of its commonly-owned station KQOK-FM. Kenai is approximately 65 miles from Homer; and 1mV/m contour of station KQOK-FM is approximately 52 miles short of Homer. At the time the translator began service no other FM services were available to Homer, Alaska.

1/ The various pleadings are: (1) Supplement to Petition to Terminate Operation; (2) Opposition to Supplement to Petition to Terminate Operation; (3) Informal Petitions to Terminate Operation; and (4) Informal Response to Petitions to Terminate Operation.

3. Subsequently, on July 12, 1979, the Commission granted Petitioner (Peninsula) a construction permit for authority to construct a new FM station in Homer, thereby bringing the first local FM service to the Homer area. The new station (KGTL-FM) commenced operation on September 22, 1979.

4. Peninsula filed its petition to terminate operation of translator station K265AG pursuant to §74.1232(h) of the Commission's rules. Subsection (d) of that rule proscribes the licensing of an FM translator to a licensee of an FM station if the translator is in a community beyond the 1mV/m contour of the FM station and is within the 1mV/m contour of an existing FM station. Section 74.1232 (h) permits the termination of a translator's operating authority, if circumstances since the grant have changed so that the authority would not have been originally granted.

5. Since KSRM is the licensee of both translator K265AG, Homer, Alaska, and of the FM Station (KQOK) whose signal the translator retransmits from Kenai, Alaska; and Homer, Alaska lies outside the 1 mV/m contour of KQOK-FM, the translator came within the purview of the termination provision of §74.1232(h) as soon as petitioner's (Peninsula) Homer, Alaska station commenced operation. We shall, therefore, examine the petition on the merits.

6. Peninsula's main contention is that given the competitive circumstances in Homer, Alaska, termination of the translator is mandated by our rules. In support of this contention Peninsula points out that when the Commission adopted its FM translator rules, the Commission recognized the problems that might arise from competition between full service FM stations and FM translators. 2/ Further, it maintains that one of the Commission's concerns was the potential economic threat to local FM stations that might arise from translators importing distant FM signals into small communities. 3/ Aware of these potential problems, the Commission fashioned translator rules and subsequent amendments around the premise that translators provide secondary, not primary services. 4/ In particular, Rule 74.1232(d) was proposed to limit a primary station rebroadcasting via a translator from taking unfair competitive advantage of a small community FM station. 5/

7. Peninsula further asserts that KSRM has aggressively used its translator as a competitive tool for expansion of its FM service area. KSRM admits to repeatedly representing, directly and indirectly, to Homer advertisers that Homer is KQOK's city of license. Not only were these representations made in newspaper advertisements but on posters and business cards as well. The only explanation provided by KSRM for these representations was that KQOK does not want to be perceived as a shortwave station; neither does it want to be identified as a Kenai station since the translator is located in Homer, not Kenai.

8. We have examined the pleadings in this matter and conclude that petitioner has not demonstrated good cause for termination of the Homer translator station. Section 74.1232(d) of the rules is permissive in nature and, therefore, allows, but does not require, termination of a translator upon a proper showing that the competitive situation in a market is such that the translator is likely to spell the demise of a local full service FM station. The evidence before the Commission in this case amounts to little more than an allegation of potential harm. Peninsula has provided scant financial or economic data to support its assertion that Station KGTL-FM cannot survive if it is required to continue competing with translator Station K265AG. We note that KGTL-FM has been in operation for more than

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2/ See Report and Order in Docket No. 17159, 20 RR 2d 1538 (1970); Notice of Proposed Rule Making in Docket 19918, 44 FCC 2d 794, 39 FR 1867 (1974); Memorandum Opinion and Order in Docket 19918, 42 RR 2d 1127, 43 FR 14695 (1978); and First Report and Order in Docket 19918, 42 RR 2d 1124, 43 FR 14660 (1978).

3/ Notice of Proposed Rule Making in Docket 19918 44 FCC 2d 794, 39 FR 1867 (1974).

4/ Report and Order in Docket No. 11611, 13 RR 1561, 1566 (1956).

5/ Memorandum Opinion and Order in Docket 19918, *supra*. (1978).

two years which would appear to be a sufficient time period within which to establish itself in the Homer market. The fact of the station's current status as an operating station is some evidence of its ability to survive. The Homer public is clearly benefited by the availability of two commercial services. In view of the fact that the evidence before us does not demonstrate the imminent demise of KGTL-FM, we believe, on balance that the public interest is served by maintaining both commercial services in Homer.

9. Our denial of the petition to terminate should not be construed by KSRM as approval of its advertising practices in Homer. Representing to Homer, advertisers that Homer is KQOK's city of license is not the kind of conduct the Commission expects from one of its licensees. As a Commission licensee, KSRM is expected to be candid and honest in its dealings with the public. Indeed, a licensee's honesty and candor is the bench mark for the Commission's assessment of a licensee's fitness to become and remain a Commission licensee. Should KSRM continue such conduct in the future, the Commission may find it necessary to review KSRM's fitness to remain a Commission licensee.

10. We have also examined several unauthorized pleadings filed by the parties and we find nothing there of substance or decisional significance which would require a different resolution of this matter.

11. Accordingly, it is ordered, that, the petition to terminate filed by Peninsula Communications Corporation is denied.

1345

In re Application of )  
 )  
 David R. Williams dba )  
 INDUSTRIAL COMMUNICATIONS )  
 )  
 For authority to construct a new base )  
 station for two-way Station KOP321 to )  
 operate on frequencies 152.06 MHz, )  
 152.09 MHz, 152.12 MHz, and 152.21 MHz )  
 in the Domestic Public Land Mobile Radio )  
 Service at Hogsback Ridge (near La Barge), )  
 Wyoming )

File No. 20185-CD-P-(4)-79

Adopted: December 29, 1981  
 Released: January 4, 1982

[§74:20, §74 505] Return of application; blatant defects.

An application for a base station was blatantly defective and was properly returned as unacceptable for filing where the application proposed operation inconsistent with the Commission's antenna height-power limitations but failed to request a waiver of that rule, failed to demonstrate any public need for the proposed facility and failed to demonstrate site availability. Industrial Communications, 50 RR 2d 1137 [Common Car. Bur., 1982].

MEMORANDUM OPINION AND ORDER

By the Common Carrier Bureau:

1. Presently before the Chief, Common Carrier Bureau, pursuant to delegated authority, is a petition for reconsideration filed by David R. Williams dba Industrial Communications (Industrial). The petition asks that the Bureau reconsider its finding that the above-captioned application was blatantly defective and unacceptable for filing. Industrial



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Before the  
Federal Communications Commission  
Washington, D.C. 20554

MM Docket No. 88-140

In the Matter of

Amendment of Part 74 of the                      RM-5416  
Commission's Rules Concerning FM                RM-5472  
Translator Stations

#### NOTICE OF INQUIRY

Adopted: March 24, 1988;                      Released: June 2, 1988

By the Commission:

#### INTRODUCTION

1. The Commission is initiating this proceeding to study the role of FM translators in the radio broadcast service. This action is taken in response to petitions for rule making filed by the National Association of Broadcasters (NAB) and several other parties that raise issues addressing FM translator matters. In its petition, the NAB requests further restrictions on FM translators to prevent their use as a means to expand the service areas of primary FM stations and tightened technical rules to prevent interference from translators to full-service FM stations. The other petitioning parties seek various forms of expansion of the current translator authority, including program origination authority.

2. Our objective in this proceeding is to examine and, where necessary or appropriate, to revise our policy regarding the authorization and operation of FM translators consistent with our overall FM allocations plan. Initially, we wish to make clear that we do not intend to alter our basic policy approach of authorizing FM translators for the purpose of providing service that is supplemental to the service provided by full-service FM stations. We continue to believe that the most effective and efficient means of providing FM service to the public is through the higher-power facilities of full-service stations. In this regard, we seek to consider whether there is any need to modify our rules to ensure that translator stations do not adversely affect the operation of full-service stations. We also intend to consider policy options for expanding the FM translator authority, as suggested by petitioners, to the extent that such policies would be consistent with the secondary nature of this authority. We request public comment on all aspects of our general policies regarding FM translators, as well as specific proposals for rules and regulations to implement any changes in these policies.

#### BACKGROUND

3. FM translators are low-power stations that receive the signals of a full-service FM station and simultaneously retransmit those signals on another frequency. FM translators were first authorized in 1970 as a means to provide

FM service to areas and populations that were unable to receive satisfactory service due to distance or intervening terrain obstructions.<sup>1</sup> While the Commission recognized the benefits of authorizing FM translator service, it also expressed concerns regarding the possible competitive impact such translators could have on full-service FM stations and the effect their authorization could have on the licensing of those stations. In view of these competitive concerns, the Commission adopted rules specifically to restrict FM translator service, ownership, and support. The FM translator rules currently in place are essentially the same as those adopted in 1970.

4. As a secondary service, FM translators currently are intended to supplement, and not serve as a substitute for, full-service stations.<sup>2</sup> Thus, FM translators are subject to rules that specifically restrict their permissible service, ownership, and support.<sup>3</sup> Commercial FM translators are limited to operation on the 20 channels originally reserved for Class A use.<sup>4</sup> Noncommercial translators may operate on any of the 20 channels reserved for noncommercial use (channels 200-220) as well as the 20 Class A commercial channels. Technically, translators are limited to one or ten watts total power output, depending on the area of the country in which they are located,<sup>5</sup> and are subject to the requirement that they may not cause interference to the direct reception by the public of the off-the-air signals of any authorized broadcast stations.<sup>6</sup> Translators may re-broadcast only the signals of a full-service FM station or of another FM translator station received directly over the air.<sup>7</sup> In this regard, the transmissions of each translator must be intended for direct reception by the general public. A translator may not be established solely as a means for relaying the signal of its primary station to a more distant facility.<sup>8</sup> In addition, translators may not engage in program origination, except for 30 seconds per hour to solicit and/or acknowledge contributions to defray installation and operation costs.<sup>9</sup> Commercial advertisements for profit are prohibited except in connection with an acknowledgment of an advertiser's contribution.

5. The current rules also provide certain restrictions on ownership and support of commercial FM translators by commercial FM licensees. Specifically, a commercial translator that is intended to provide service to areas beyond the primary station's 1 mV/m contour and within the 1 mV/m contour of another commercial FM station assigned to a different principal community, will not be authorized to the primary FM station licensee, or to an applicant who receives support from such licensee prior to commencement of translator operations.<sup>10</sup> However, the primary station licensee may financially support the operation and maintenance of such a translator after operations commence.<sup>11</sup> In all other cases, any qualified individual, organized group of individuals, or local civil government body may be licensed to operate a translator within or outside the 1 mV/m contour of the primary station. There are no restrictions on ownership of noncommercial translators.

#### PETITIONS FOR RULE MAKING

6. Before the Commission are seven petitions for rule making regarding FM translator matters filed by the NAB, AGK Communications, Inc. (AGK),<sup>12</sup> John Davidson Craver (Craver),<sup>13</sup> John S. La Tour (La Tour),<sup>14</sup> Bruce Quinn (Quinn), Communications General Corporation (CGC),<sup>15</sup> and Robert Jacoby (Jacoby).<sup>16</sup> NAB's petition

appeared on Public Notice (RM-5416) on May 14, 1986, and in response sixteen comments, three reply comments, and two informal comments were submitted. The AGK petition appeared on Public Notice (RM-5472) on June 13, 1986, and in response three comments were submitted.<sup>17</sup>

7. *The National Association of Broadcasters Petition.* NAB states that it considers FM translators to be a necessary and beneficial part of broadcast service. However, it contends that the current translator rules do not clearly reflect the Commission's original intent that such stations provide only supplementary service and, as a result, many abuses are occurring. NAB takes the position that translators generally should be used only to fill in the 1 mV/m contours of primary stations and to provide FM service to areas not within the 1 mV/m contour of any full-service FM station. It also believes that the Commission should allow the use of FM translators to retransmit AM radio signals to improve AM service. NAB proposes rule changes that it believes are necessary to strictly align the FM translator rules with these purposes. Its proposals address three separate areas of concern: unfair competitive expansion; technical interference; and AM radio improvement.

8. With respect to competitive expansion, NAB believes that the current ownership and financial support rules, as well as the lack of specific technical standards, provide avenues for the use of translators to expand competitively the service areas of primary stations. NAB states that translators importing distant radio signals into the 1 mV/m contours of full-service FM stations, in many cases through their use as relays, disrupt the balance of competition among, and drain critical revenues from, local stations, particularly in medium and small markets.<sup>18</sup> To restrict the use of translators for competitive purposes, it proposes that any use of translators, by either the primary station or independent entities, that would have the effect of extending the primary station's coverage area into the 1 mV/m contour of another FM station, be prohibited. Further, to prevent the use of translators solely as relays, NAB proposes implementation of community standards to ensure that each translator station will serve a populated area and adoption of specific minimum signal strength requirements to provide for community coverage.

9. To eliminate incentives to use translators to competitively expand the service areas of primary stations, NAB proposes that the Commission specifically prohibit the use of a translator to earn a profit. In addition, it proposes that strict limits on translator program origination be imposed such that only community-sponsored translators would be allowed to broadcast commercial announcements in connection with the acknowledgment of contributions toward station operation and maintenance. NAB also recommends prohibiting primary stations from supporting any translators financially except those whose sole purpose is to fill in areas within their 1 mV/m contours. It argues that this prohibition is needed to prevent primary station support of a translator after commencement of operations in amounts large enough to reimburse the translator licensee for application and construction costs. NAB asserts that this measure also is needed to halt schemes whereby translator licensees circumvent the prohibition against commercial advertising by leasing their translator back to the primary station in consideration for advertising time thereon.

10. Regarding technical interference by FM translators, NAB believes that the current rules prohibiting translators from causing any interference that impairs direct reception of regularly used off-the-air signals not only are inadequate, but also are so vague that they provide no definitive standards.<sup>19</sup> It asserts that many translators are causing interference to full-service stations. NAB takes the position that because any energy radiated in the FM band can potentially cause interference, translators should be subject to technical standards that are as strict as those employed for full-service FM stations. It proposes, therefore, adoption of specific contour overlap or minimum mileage standards and maximum permissible effective radiated power (ERP) levels. NAB also believes that more precise standards for use of directional antennas by translators would reduce their potential for creating interference.

11. Finally, NAB states that positive new uses of FM translators should be explored. In this context, it recommends authorizing FM translators to retransmit AM signals. In its petition, NAB states that this change in the permissible uses of FM translators would enhance the quality of AM radio in furtherance of the Commission's recognized need for improvements in that service. However, in its reply comments, it also states the concern of its Board of Directors that, while this proposal may aid individual stations, a proliferation of FM rebroadcasts of AM programming might lead to an overall diminution of AM radio audiences. Thus, NAB urges the Commission to carefully scrutinize this proposal to ensure that it would not be contrary to the overall goal of AM improvement.

12. *Comments in Response to the NAB Petition.* Sixteen parties filed comments and three parties filed replies in response to the NAB petition.<sup>20</sup> Responses to the NAB proposals take positions on both sides of the issues raised therein. Commenting broadcasters generally agree with NAB's position that the rules are being abused to competitively expand the service areas of primary stations. They urge the Commission to initiate a rule making looking toward clarification and tightening of the rules to align them with the original intended purposes of translator service.

13. Most of the commenting broadcasters support NAB's position that translators should be prohibited from importing distant signals within the 1 mV/m contours of full-service stations. Their main concern is for possible adverse effects of such translators on local radio market structure, competition, and news and public affairs programming, as well as the principles of localism. They assert that translators serving areas outside the 1 mV/m contours of their primary stations seriously threaten to undermine the economic viability of the local stations within whose service areas such translators are operating. The Tucson Broadcasters Association also points out that translators do not have local service obligations. It asserts that the intent of Section 307(b) of the Communications Act<sup>21</sup> is to provide for as many outlets as possible "for local self-expression" and, thus, the Act does not contemplate service within a community from stations located hundreds of miles away.

14. Commenting broadcasters also agree with NAB that primary stations should be prohibited from financially supporting any translator rebroadcasting their signals beyond their 1 mV/m contours. They generally argue that entrepreneurs seeking to establish translators to rebroadcast non-local stations are motivated by the potential to

profit from financial support by primary stations in excess of operation and maintenance costs, or the possibility of operating a low-power FM program origination radio service, which they anticipate the Commission will eventually authorize. In this regard, a few commenters describe the relationship of translators to local stations within their state or particular communities. Generally, the situations depicted support the commenters' concerns about the influx of translators within their stations' 1 mV/m service contours and the observations that entrepreneurs are establishing translator networks across large areas of their states.

15. Several commenters oppose changes that would tighten the FM translator rules. Among these are several translator operators who believe that NAB's proposals are "protectionist" and that translators do not pose an economic threat to full-service stations. They take the position that translators increase program diversity and provide radio service tailored to the needs of the listening public. In this regard, Double Eagle Broadcasting and La Tour favor permitting translators to rebroadcast AM stations and to engage in program origination. La Tour also believes that translator operators should be allowed to earn a return on their investments and should not be prohibited from making a profit.

16. Faith Communications Center (Faith), a public radio broadcaster, and Mars Hill Broadcasting Company, Inc. further argue that translators serving areas beyond their primary stations' 1 mV/m contours are needed to provide many communities with specialized program formats. In this regard, Faith opposes more stringent rules against the use of translators as relays on the ground that they would preclude service to isolated areas unable to support a full-service station. La Tour states that "daisy chaining" of translators as relays is not inefficient in that it only utilizes spectrum unable to accommodate full-service stations. He adds, however, that since such signals are subject to significant degradation, alternative means of input signal delivery, such as use of microwave facilities, should be permitted. Finally, CGC opposes NAB's proposal to allow FM translators to rebroadcast AM signals on the grounds it would further siphon listeners from the already fragmented AM band and draw attention away from correcting fundamental problems in AM service.

17. Commenting consulting engineers address NAB's concerns that translators may interfere with full-service stations. John J. Davis points out that NAB did not cite any specific instances of adverse effects from the use of directional antennas, and takes the position that the current practice of licensing translators based on proposed transmitter power and directional antenna use works well. Davis suggests incorporating the prohibited overlap standards for noncommercial educational stations in Section 73.509 of the rules into the translator rules. CGC, on the other hand, endorses minimum distance separation standards as the preferable solution to interference by translators. It states that such standards would provide simple "go/no-go" answers for application processing and be compatible with the short-spacing computer programs currently used for full-service FM stations. It also suggests establishing strict ERP and antenna height above average terrain (HAAT) limitations for translators that correspond to the various classes of primary FM stations. However, CGC observes that minimum distance standards likely would curtail the number of channels available for fill-in

translator service, and recommends waiving these requirements where broadcasters enter into private short-spacing agreements.

18. CGC also suggests that in view of the recent rule changes in BC Docket No. 80-90<sup>22</sup> to allow full-service Class A stations to operate on all 80 commercial channels, translators should not be restricted to the twenty channels originally reserved for Class A use.<sup>23</sup> In addition, it states that significant improvements in fill-in service to deeply shadowed pocket areas could be made by permitting translators to use any available means of input signal delivery, including telephone lines, CATV systems, and microwave facilities.

19. *The AGK Communications, Inc. Petition*. AGK's petition addresses the prohibition in Section 74.1232(d) of the rules on commercial primary station ownership of translators outside their 1 mV/m contours and within the 1 mV/m contour of another FM station assigned to a different principal community. Specifically, AGK proposes that the Commission delete Section 74.1232(d) in its entirety.<sup>24</sup> If the Commission were to decide not to adopt its primary proposal, AGK proposes alternatively amending Section 74.1232(d) to provide commercial FM stations added flexibility to establish translators outside their 1 mV/m contours. For example, AGK states that FM stations could be permitted to operate translators anywhere within 100 miles of their community of license.

20. AGK argues that Section 74.1232(d) unfairly places FM licensees at a disadvantage vis-a-vis competition among broadcast stations serving the same Arbitron Metro Ratings area. In this regard, AGK states that the signal of its Station WAQX(FM) covers nearly 100 percent of the county in which Manlius, New York, is located, but only 15 percent of each of the other two counties that comprise its Metro Ratings area. It asserts that since Station WAQX(FM) is unable to serve a large portion of its ratings area, its audience share is diminished, its ranking among competing stations is lowered, and its ability to set competitive advertising rates is affected. AGK thus contends that its interests are adversely affected by Section 74.1232(d), and suggests that since this problem is encountered by FM stations throughout the country, its petition raises concerns of general applicability.

21. In support of its proposal, AGK states that the Commission's concern in prohibiting primary stations from operating translators outside their 1 mV/m contours has been the possibility that small market stations would be competitively disadvantaged if large market stations establish translators in smaller communities and attempt to sell advertising on the primary station to local merchants. It cites the Commission's statement in Docket No. 19918 that in most cases small market stations would not be competing for advertising with translators retransmitting signals from larger market stations because local merchants would have little interest in incurring higher costs for coverage outside their small town area that would not generate additional sales.<sup>25</sup> AGK, therefore, submits that the Commission has found it unnecessary to protect small market stations from translator operations by distant large city stations. It asserts that small market stations not only would remain unharmed if Section 74.1232(d) were deleted, but also would benefit by expanding their service areas through the operation of translators. AGK also states that since the rule applies only to FM licensees and the

public at large is already eligible for translator licensing, its deletion would not produce a flood of new applications.

22. *Comments in Response to the AGK Petition.* Comments in response to AGK's petition were filed by CBS Inc. (CBS), Cornell Radio Guild, Inc. (Cornell), and NAB. All three commenters oppose AGK's proposal on the grounds that it is contrary to the purposes of the FM translator service. In this regard, CBS states that the Commission's new allocation rules in Docket No. 80-90 will provide FM service to previously unserved areas and, therefore, expanded translator service to those areas is not needed.

23. NAB and Cornell discuss the possible effects of AGK's proposal on competition in local radio markets and on local service to the public. NAB asserts that this proposal would exacerbate the abusive unfair competitive practices detailed in its petition that it claims are having deleterious and dislocative effects in many local markets. It also states that in view of their secondary status, the proliferation of licensee-owned translators would be contrary to the public interest. NAB further contends that although translators are secondary facilities that by rule must cease operation if they conflict with a new full-service station, there are practical difficulties with forcing them off the air in such cases. Thus, it argues that the existence of a translator may deter a potential applicant from building a full-service station in a particular market, and that the existence of several translators in a market would magnify such deterrent effects.

24. Cornell asserts that the effect of AGK's proposal would be to allow FM licensees unlimited use of translators to extend their service areas and claims that such uses would disrupt the operation and delicate competitive balance of local radio markets by fractionalizing listening audiences. It states that intrusion by such stations into local FM markets could result in a net loss of local service to communities that would undermine the Commission's policies in furtherance of Section 307(b) of the Communications Act. Additionally, with respect to AGK's claim that Station WAQX(FM) is competitively disadvantaged by the inability to use translators outside its 1 mV/m contour, Cornell states that the Commission's concern for the financial success of individual broadcast stations should not go beyond ensuring that there is no loss of service to local communities.

25. Finally, the commenters argue that AGK's proposal would have an undesirable impact on FM licensees' ownership of broadcast facilities generally. Cornell argues that AGK's proposal would permit FM licensees to avoid the restrictions in the multiple ownership rules on the number of stations an individual licensee may own.<sup>26</sup> CBS contends that this proposal would undermine the duopoly provisions of the multiple ownership rules by permitting a licensee to serve a market where it has a full-service station with a translator that rebroadcasts another of its full-service stations that is located in a different market.<sup>27</sup>

26. *The John Davidson Craver Petition.* Craver requests that the Commission modify the rules to authorize unlimited local origination on FM translators.<sup>28</sup> He states that this would permit "narrowcasting" of diverse and unique programming targeted to smaller geographic areas that share common interests, and sometimes languages, which otherwise would not be commercially viable. He states that this service would be in the public interest and would constitute an efficient use of the FM broadcast band since

translators fill in the gaps between full-service stations without creating objectionable interference. Finally, he states that because FM translators are less expensive to build and operate than full-service stations, his proposal would make participation in broadcasting possible for a larger segment of the public.

27. *The John S. La Tour Petition.* La Tour also requests that the FM translator rules be modified to permit unlimited program origination. La Tour further proposes that the Commission: 1) allow FM translator networking using satellite technology, 2) protect translators from interference by other services through channel-spacing requirements,<sup>29</sup> and, 3) permit operation of translators on all classes of FM channels with uniform ten watt power outputs. La Tour argues that communities are well served only when they have the proper mix of programming and services as determined by market forces, and states that expanded service authority for translators is a low cost avenue for program formats of narrow audience appeal that cannot be provided by full-service stations. According to La Tour, the reasons for the lack of variety in FM programming are largely economic, since full-service stations must attract the widest possible audience in order to maximize advertising revenues. He states that since translators cannot cover as wide a geographic area as full-service stations, they would have a strong economic incentive not to compete with existing services, but rather would originate programming tailored to meet the needs of their individual communities. In this regard, La Tour states that translators should be allowed to utilize satellite technology to develop networks capable of producing such narrow appeal program formats economically. In addition, he asserts that translators engaging in program origination should not be constrained by an arbitrary one-watt power output limit east of the Mississippi River, if spacing requirements can be met. He further argues that they should not be restricted to operation on the original Class A channels when use of any available channel would make more efficient use of the spectrum. La Tour also states that, since translators originating programming are the only facilities capable of providing narrow appeal formats without succumbing to the economic perils of the marketplace, they should not be classified as a secondary service, but instead should be protected from interference by other broadcast services. He states that such protection is needed in order to encourage interest and investment in an FM translator radio service.

28. *The Communications General Corporation Petition.* CGC requests that the Commission amend Section 74.1201(b)(1) of the rules to allow the operation of FM translators on any of the 80 channels (Channels 221-300 inclusive) of the commercial FM band. Petitioner states that the current restriction limiting FM translators to only 20 output channels, formerly reserved for Class A stations, is outdated and serves no useful purpose in light of the fact that Class A stations are now permitted to operate on any of the 80 channels of the commercial FM band. As a consulting engineering firm, CGC states that it has found that the current restriction often precludes the operation of FM translators, particularly in metropolitan areas, due to Class A channel crowding.

29. *The Bruce Quinn Petition.* In his petition, Quinn requests that the Commission permit low-power Class D stations, operating at ten watts or less, on frequencies between 92.1 and 107.9 Mhz (Channels 221-300) on the FM broadcast band. He points out that technical standards

and separations requirements already exist in the rules. Quinn submits that Class D facilities need not be allocated as long as the applicant can prove that the channel meets the spacing requirements. He also proposes that a Class D broadcaster be required to move to another frequency or shut down if a construction permit is later granted to any higher class station in the area that conflicts with its channel. Quinn states that implementation of his proposal would serve the public interest by making thousands of new channels available throughout the country. He submits that such stations would be inexpensive to build and operate and would provide greater opportunities for the public to participate in broadcasting. Quinn further contends that programming formats that are not suitable for high-power commercial or educational stations could survive on such Class D stations, and add to the diversity of voices available to the public.

30. *The Robert Jacoby Petition.* Jacoby proposes a new low-power Consumer Information Service (CIS) on the FM radio band that would be similar to the Travel Information Service on the AM band. As he proposes, these low-power stations would broadcast over a five-mile radius from shopping centers, malls, or similar commercial areas to advise potential shoppers of available products and merchandise. Jacoby also suggests that a portion of each hour could be devoted to public service and calendar-type messages. He states that CIS radio would be akin to the "Yellow Pages" and would aid consumers in learning of available choices on the way to locations where they shop. Jacoby states that such stations also would aid local merchants who cannot afford to advertise on full-power stations and would allow them to focus their advertising resources towards those consumers likely to be potential customers. He contends that this service is likely to increase the overall amount of advertising on broadcast facilities rather than simply draw advertising away from full-power commercial stations. Further, he asserts that CIS would aid local merchants who must compete increasingly with home shopping services. Jacoby proposes that such stations be authorized on a case-by-case basis where they would not cause interference to existing stations.

#### DISCUSSION

31. It is apparent from the petitions for rule making that there is considerable concern about the adverse impact upon full-service FM stations of FM translator use under the current rules, as well as interest in new and expanded uses of FM translators. We are aware of the concerns expressed by NAB and its supporters that translators may have an adverse competitive and technical impact on the service provided by full-service FM stations and the possible need to strengthen the existing limitations on translator operation. We also note that other petitions to increase use of FM translator facilities to provide new service to underserved areas and to serve the interests of specialized audiences may be generally consistent with our goal of maximizing the number and diversity of mass media outlets. In view of the concerns and interests expressed by parties on both sides of this matter, we believe it is appropriate to initiate a broad reexamination of our FM translator policies.

32. We want to emphasize at the outset of this proceeding that we have not changed our longstanding view that the proper role of FM translators is to provide supplementary service to unserved and underserved areas, and to

areas unable to receive satisfactory reception within the normal predicted service areas of primary FM stations.<sup>30</sup> Full-service stations operate at power levels significantly higher than those permissible for translators and, therefore, they provide coverage to geographic areas much larger than those translators are capable of serving. Our experience with low-power stations like translators indicates that substantial spectrum inefficiencies may result from their operation on a primary basis. For example, in the 1978 *Report and Order* in Docket No. 20735, the Commission terminated the acceptance of applications for low-power Class D noncommercial stations and required existing Class D stations either to upgrade their facilities or move to nonreserved commercial channels.<sup>31</sup> In taking that action, the Commission found that the large number of limited-range Class D stations then operating were impeding licensing of more efficient Class B and C stations. The Commission also observed that full-service stations make more efficient use of the spectrum than translators in that the ratio of coverage to interference area is much larger for full-service stations than for low-power translators. In view of our commitment to authorize primary service in the most spectrally efficient manner, we believe it is necessary and appropriate to preserve the existing relationships in our FM allocations scheme and, thus, to maintain full-service stations and translators in their current roles as providers of primary and secondary service, respectively. Consistent with this position, we do not contemplate the creation, as the La Tour petition appears to suggest, of a new class of low-power FM stations equal in standing to full-service facilities<sup>32</sup> and will carefully examine all policy options in this area in terms of their effect on our overall FM allocations plan.

33. We invite interested parties to comment on the appropriate regulatory structure for the authorization of FM translator station operations, including, but not limited to, the issues and service applications indicated in the various petitions. We particularly request that commenters consider the possible adverse effects, as argued by the NAB and its supporters, of translators authorized under the current rules. We also invite the submission of any other information that may be relevant to a broad reevaluation of our FM translator regulatory scheme. In addition, we seek comment and proposals concerning the need for revision to the FM translator rules to prevent their abuse, including real party-in-interest and interference protection standards, that are more specific than those currently in place under the existing FM translator rules. Further, commenters are asked to consider ways in which FM translators can be used to provide better service to underserved areas. Commenters are asked to be specific in stating proposals and presenting arguments and evidence concerning the benefits or adverse effects of any modifications to FM translator authority, especially with respect to expanded FM translator service, as general claims and allegations are of less value in deciding the issues addressed herein.

#### *The Impact of Translators on Full - service Stations*

34. *Translator Service Issues.* The NAB and others argue that translators are being used to introduce unfair competition into radio markets that are well-served by full-service stations. They argue that some translators now are being used to import the signals of large, major market stations into medium or small markets that might not be able to support another full-service station. NAB observes

that the costs of building and operating a translator appear to be minimal relative to those of a full-service station and that translators do not now have the same program service obligations as full-service stations. While these obligations have been made less burdensome by our action in the *Radio Deregulation* proceeding,<sup>33</sup> full-service stations remain subject to requirements for studio origination capability and issue-responsive programming and, as a result, have a higher cost structure. We seek comment on whether these operational cost advantages unfairly advantage a translator vis-a-vis the existing full-service stations, and to what extent translators serving a relatively small area could limit the entry of new full-service stations or impact the service of existing stations.

35. We request comment on whether and under what market conditions translators might cause harm to program services provided to the public by those full-service stations. In this regard, commenters should consider whether the existing regulatory scheme for FM translators, or an alternative providing more stringent regulation, would best serve to ensure the availability of the optimal amount of quality radio service to the public. We seek information regarding the extent to which translators licensed under the current rules may be operating beyond their intended role as providers of fill-in and supplemental service.

36. Under current practice the need for a translator station is presumed upon the filing of the application. The burden is on an objector to make a *prima facie* showing of lack of need. Only if this *prima facie* showing of lack of need is made, or if an applicant is seeking more than one FM translator to rebroadcast the same primary station, must the applicant document a need for the proposed new FM translator station. Numerous parties filing petitions to deny and petitions for reconsideration of staff actions granting FM translator applications suggest that the burden of proof should be shifted to the FM translator applicant to establish the need for the new service. These same parties also question whether there are clear criteria for establishing a lack of need. They point out that since the mere listing of the number of existing stations, regardless of their number or format, is insufficient to establish lack of need, some other guidelines must be provided. They suggest that the Commission consider whether the translator is to be located in a major city or in a small isolated community, whether the proposed area of service is already being served by an abundance of existing radio stations, and whether the primary station's signal originated in a distant city. We seek comment on whether the burden should be shifted to the FM translator applicant to establish a need for the new service. We also seek comment on the criteria that should be used to show that there is a need for such new service. Furthermore, we seek comment on the criteria that an objector must show to establish a *prima facie* lack of need under the current policy.

37. In studying the impact of translators on full-service stations, commenters are asked to address the extent to which translators have advantages compared to the full-service stations with which they might compete for audience. On the one hand, as a number of parties have pointed out, translators typically cost much less to build and operate than full-service stations. In particular, since translators only operate with an output of 1 or 10 watts, they use much smaller and lower-power transmitters than stations in any of the classes of full-service FM stations

Hence, the costs of the transmitter and electricity to operate the transmitter are far lower than for a full-service station. Translator equipment also requires little maintenance and occupies only a small space, further reducing operating costs. Another major translator cost advantage is that, to the extent that translators simply relay programs of their primary station, the primary station, rather than the translator, bears the direct costs of those programs. Translator licensees also save in that they do not have to maintain studio facilities for program origination. On the other hand, as a result of the restrictions on power output of translators, the signal of a basic translator employing a single 10 watt radio frequency amplifier and a simple antenna covers a much smaller area than does a full-service station.<sup>34</sup> Hence the potential audience and thus the possible revenue that can be obtained by such a translator is far smaller than that of a full-service station.

38. We seek comment on the need to modify the restrictions on ownership and support by a primary station of a translator operating within the service area of another full-service station. Under existing rules, as discussed above, if a commercial translator places a signal outside the predicted 1 mV/m contour of the originating FM station, that translator may only be operated by the full-service station if it is not located within the predicted 1 mV/m contour of another full-service commercial station assigned to a different principal community. Full-service station licensees also are prohibited from providing support to other persons or organizations that wish to construct a translator outside the 1 mV/m contour of the station, and within the 1 mV/m contour of another full-service station assigned to a different principal community, prior to the commencement of operation of the translator. Hence, current rules generally allow full-service FM stations to own and operate translators in rural areas where no other commercial FM service is available. On the other hand, individuals or community organizations may, on their own, construct translators that bring in distant signals within the 1 mV/m contour of another commercial FM station. The Commission placed these restrictions on translators owned or operated by full-service stations in order to prevent those stations from expanding their area of coverage to areas where the translator might adversely affect other full-service stations.<sup>35</sup> The Commission was particularly concerned about the adverse impact of translators on small, marginally profitable stations located in small markets or in rural areas.

39. We seek information on NAB's proposal to prohibit any use of translators that would have the effect of extending a primary station's signal into the coverage area of another commercial full-service station. We also request information on the extent to which stations operating under the current less restrictive approach might be providing needed service. We are aware of NAB's concern that many translators are being used solely as relay stations to allow a primary station to provide translator service in a distant community. We seek information on the extent to which translators are being used solely to relay signals to another translator in a distant community served by one or more full-service stations. We also invite comment on NAB's proposal in this regard that we adopt community standards and minimum signal strength requirements for community coverage to ensure that translators serve populated areas.



40. The 1 mV/m criteria of the translator rules apply to all classes of commercial full-service FM stations. However, other provisions of our rules recognize that the predicted service areas of Class B and Class B1 stations extend to their 0.5 and 0.7 predicted contours, respectively.<sup>36</sup> Among the options available to the Commission would be to remove the 1 mV/m contour restriction entirely, or to modify the restriction to use a 0.5 or a 0.7 mV/m contour to define both the area in which a primary station may build a translator and/or the area in which it is forbidden to build a translator. We request comment on whether the 1 mV/m rule or a revised version of this rule, should be made consistent with the predicted service contours of Class B and B1 stations.

41. The limitations in the current rules on translator support by primary station licensees and locally originated messages to obtain contributions and advertiser support were designed to limit exploitation of translators for economic purposes. According to the NAB and the statements of numerous parties filing petitions to deny applications for new translator stations, translator operators are devising schemes to subvert the spirit of these rules that make it possible to operate translators as profit-making ventures. We request information about the nature of translator profit-making schemes, such as the lease back approach mentioned by NAB, the extent to which they are used in translator operations, and the extent to which the translators operated thereby adversely affect the operation of full-service FM stations. In conjunction with this issue, we seek comment on the NAB's proposal that we adopt rules that: 1) specifically prohibit profit making with FM translators; 2) only allow community-sponsored translators to originate messages regarding contributions towards station operation and maintenance; and, 3) prohibit primary stations from financially supporting any translators other than those providing fill-in service within their 1 mV/m contours.

42. An important issue we wish to examine is how to decide among mutually exclusive applications. This is an issue that has arisen recently in the context of the current FM translator rules. We believe it would not be cost effective to employ the comparative hearing process now used for full-service TV, AM, and FM radio applications to resolve conflicts between translators. In order to keep application filing and processing costs low, we believe it would be more appropriate to use an alternate approach such as a lottery of the form authorized by Section 309(i) of the Communications Act.<sup>37</sup> The lottery is currently used for one other mass media service - LPTV.<sup>38</sup> Comments and information are solicited on possible approaches for resolving mutually exclusive FM translator applications.

43. *Technical standards.* We recognize that there is concern on the part of many FM broadcasters that the current rule that prohibits FM translators from causing interference to full-service stations may be inadequate.<sup>39</sup> The NAB and its supporters argue that translator stations are causing interference to full-service stations. Our own records indicate that between 15 and 20 complaints of interference to FM stations by translators have been received in each of the last several years. It is not practical to establish general interference standards that would *absolutely* ensure before they begin operation that translators would not cause interference to full-service stations. Such standards would preclude many translators that would not cause interference to full-service stations. However, standards more stringent than those currently in place that

would provide additional protection without unduly restricting translator operations could be adopted, if they were warranted. We request comment on whether the number of complaints of translator interference to full-service stations poses problems for full-service stations to an extent that more stringent protection is necessary in order to *a priori* guard against such problems. In light of the interference concerns raised by NAB, we believe it is desirable to consider alternative interference standards for such stations. We request comment on the need for alternative technical standards, including the possibility of adopting more stringent standards.

44. One alternative approach for improved interference protection would be to adopt distance separation standards for FM translators and co-channel and/or adjacent channel translators and full-service stations comparable to those specified for minimum distances between full-service stations.<sup>40</sup> Another means of interference protection would be to codify prohibited overlap of signal strength contours similar to those that apply to noncommercial educational FM stations.<sup>41</sup> We seek comment on the extent to which either of these approaches would provide a workable solution for the potential problem of interference involving translator stations. We further request comment on the need to restrict the effective radiated power (ERP) of translators and/or height above average terrain (HAAT) and to impose more precise standards for use of directional antennas by such stations to prevent interference. Interested parties are requested to comment on the effects of more stringent interference standards on the availability of FM translator channels and the cost of establishing stations.

45. The question of interference standards also is associated with the more general technical issue of the quality of the signal provided to consumers as limited by the level of interference among FM stations. The Commission designed FM radio as a service with low interference and noise levels from its inception.<sup>42</sup> Among other things, the Commission authorized FM stations to use a much wider bandwidth than AM stations and designed a table of allotments for FM stations. Moreover, the technical characteristics of FM transmission and reception make FM less susceptible than AM to noise and interference from weaker co-channel and adjacent channel FM stations. Nevertheless, it is possible that the operation of several FM translators in a given area might raise the level of interference to a point at which the quality of FM sound received might be significantly degraded.

46. We request comments on the extent to which translator operations might raise the overall level of interference and background noise on the FM band. We request information on the extent, if any, to which the interference level might rise and a substantially increased fraction of the public might experience noise or interference in attempting to receive FM signals. We also request comment and proposals on ways to minimize the increased level of interference. In particular, we ask whether it would be necessary or desirable to develop equipment performance standards for translators in order to reduce the potential interference level. A related issue is whether translators should have any rights of protection against other translators. Because we have concluded that translators will continue to retain their secondary status, we do not propose to protect them against any full-service stations.



47. Whatever technical interference standards we may adopt, there may be situations where translator-to-translator interference occurs. In spite of the fact that technical standards can, in principle, be designed to provide adequate interference protection, in reality they sometimes do not do so because of unique circumstances in a particular location. Thus, it may be appropriate to consider establishing a policy for handling interference situations that may arise where stations are otherwise in conformance with the technical rules. In this regard, we ask commenters to address whether it would be appropriate to adopt a policy whereby, if translator stations meet our technical allocation standards, a certain degree of interference that occurs as a result of the operation of those stations must be accepted. In addition, should we determine that it is necessary to resolve problems of interference between translators, we seek comment and proposals regarding the appropriate interference standards. We emphasize that such provisions would apply *only* to interference from a translator to a translator or a translator to another secondary service, and not to interference by translators to full-service stations or vice versa.

48. We also are concerned that some noncommercial FM translators operating on the reserved channels serving areas beyond the Grade B contour of a television station operating on TV channel six may be causing interference to the reception of channel six stations. In the past, we have found that the requirement of Section 74.1203(a) of our rules that FM translators not cause interference "to the direct reception by the public of the off-the-air signal of any authorized broadcast station" sufficient to protect against undue interference in such cases.<sup>43</sup> We ask for comment on whether we should adopt further restrictions on noncommercial FM translator stations operating on frequencies near TV channel six in areas where there are TV channel six stations or assignments.

#### *Expansions of the FM Translator Authority*

49. Our primary objective in this proceeding is to consider regulatory changes that will both promote translator use for fill-in and rural service and prevent translator operations from inappropriately affecting full-service stations. On the other side of this matter, however, several parties have submitted proposals for expanding the authority for operation and use of FM translators. There are important considerations that lead us to proceed with caution in contemplating expansions of the basic service authorization. First, there are the concerns expressed by NAB that expanded operation of FM translators could impact full-service FM stations, as discussed above. In addition, the licensing of large numbers of FM translator stations could impose undue burdens on the Commission's resources, and thus might cause delays in the initiation of new translator service to the public in areas unserved or underserved by full-service stations. Also, widespread operation of FM translator stations could pose significant and difficult new monitoring and enforcement requirements for the Commission. For all these reasons, we tentatively conclude that translator operations should not be altered substantially. Nevertheless, some types of expanded use of such stations may offer benefits to the public in underserved areas. Therefore, in the interest of developing a full record in this area, we invite commenters to address the proposals advanced in the various petitions.

50. Our discussion herein of possible expansions of the translator rules generally addresses the types of changes proposed by the petitioning parties. However, we do not intend to limit the scope of this inquiry to only those issues. Parties interested in this matter are invited to submit comment, information, and proposals regarding any aspect of FM translators and our rules and policies with respect thereto. We ask that commenting parties pay careful attention to the full implications of specific proposals for expansions of service.

51. We invite comment on the advisability of eliminating or relaxing the prohibition in Section 74.1232(d) of the rules on ownership or support of translators by primary stations outside their 1 m/Vm contours. Interested parties are asked to comment on the extent to which the ability to reach nearby areas outside a primary station's service area but within the service area of other full-service stations might benefit radio listeners. We also seek comment on the potential adverse effects of such a rule change, as discussed by parties opposing AGK's request. We are particularly interested in discussion of why the audience survey problem discussed by AGK should be remedied through regulation as opposed to negotiations between the private parties involved. From a more general standpoint, we seek comment on the public interest benefits to be derived from permitting FM translators to import popular programming, with corresponding high audience appeal, from a full-power station in another market.

52. We also invite comment on authorizing increased program origination by FM translators as proposed by Craver, La Tour, Quinn, and Jacoby. We observe that to permit unlimited program origination has the potential to make available more channels of radio programming in less rural areas of the country. In these areas, program origination authority may result in programming tailored to small audiences with specialized tastes rather than to a least common denominator mass audience. We seek comments on the value, need, and desirability of expanding the FM translator authority to permit increased program origination. Since the expected location of such translators would affect listeners' options as well as competing full-service stations, we request comments on the expected location of such new translators. We also request information regarding the extent to which the service provided by full-power FM stations may not meet the public's needs or wants and how expanded translator program origination might further the public interest in this regard.

53. As indicated above, the permissible output power of FM translators is limited under our existing rules to either one or ten watts depending on the location of the station.<sup>44</sup> We ask commenters to address the issue of whether it might be desirable for the authorized power of FM translators to be uniform throughout the country. Interested parties are requested to comment on the desirability and effects of increasing the authorized power for FM translators to 10 watts nationwide. We are particularly interested in information on the extent to which translators operating at higher power might cause increased interference to full-service stations located east of the Mississippi River and in Zone I-A.

54. Commenters also are invited to examine the need for the current rule prohibiting FM translators operating on non-reserved channels (channels 221-300) from re-broadcasting signals that are not received directly over-the-air from their primary station. This rule was designed as part of the Commission's traditional plan for limiting

the economic impact of translators on full-service stations. In a separate action today, we are eliminating the over-the-air signal delivery requirement for noncommercial educational translators that operate on reserved channels and that are owned and operated by their noncommercial educational parent station.<sup>45</sup> In that action, we are allowing those noncommercial translators to rebroadcast distant signals delivered by any technical method, including microwave and satellite facilities. Permitting translators that operate on non-reserved channels this flexibility would allow them the option of trading off higher technical quality of the received signal against the cost of the technology used to bring in the signal. Moreover, our current rules that essentially limit commercial FM translator reception to the line-of-sight of their primary station may have the unintended effect of restricting the use of translators in some mountainous areas where a full-power station might wish to locate a fill-in translator relatively close to the station, but is precluded from delivering its signal to that translator by terrain features. If there is, in fact, a public policy reason to continue to restrict the distance over which a commercial translator may pick up a distant signal, we question whether it may be preferable to define a maximum distance from which the signal may be received, but not restrict the technology used to bring the signal to the translator itself. We request comments on our rule restricting the technology used to deliver signals to translator stations and whether it is desirable to retain, relax or eliminate this rule.<sup>46</sup>

55. We also seek comment on whether, if we were to allow the use of alternate signal delivery to commercial translators, it would be desirable to authorize use of broadcast auxiliary facilities to deliver program signals to commercial FM translators.<sup>47</sup> We recognize that these frequencies already are congested in many areas, particularly the larger markets, and that use of intercity relays to relay signals to translators could affect the availability of channel space for broadcast auxiliary stations intended to serve primary stations. However, it is also likely that broadcast auxiliary channels may be unused in the more remote areas typically served by translators. The use of broadcast auxiliary frequencies with commercial translators may be acceptable so long as that use was on a secondary basis and frequency use is coordinated with local frequency coordinating committees. A secondary authorization would provide that broadcast auxiliary channels could be used to deliver signals to translators where such use would not interfere with use of those channels to serve full-service stations.

56. We also intend to consider the possibility of permitting FM translators to be used to rebroadcast the signals of AM stations. Initially, we note that the Commission has dismissed similar proposals in the past. In those decisions the Commission generally noted that there are distinct technical differences between the AM and FM services that argue against simply extending the current FM translator authorization to include the rebroadcasting of AM signals.<sup>48</sup>

57. One of these differences concerns the marked propagation differences between signals in the AM and FM bands. Unlike the signals of FM stations, which are propagated essentially along line-of-sight paths, the primary groundwave signals of AM broadcast stations propagate along the surface of the earth. For this reason the line-of-sight distance between a transmitter and receiving antenna does not have the same importance for an AM

station as it does for an FM station. Thus, terrain obstructions do not limit reception of signals in the AM band in the same manner as they do signals in the FM band. Consequently, non-directional AM stations in areas with uneven terrain generally do not need the fill-in service provided by translators to reach listeners within their predicted contours. However, we recognize that many AM stations employ directional antennas, some of which have large null areas. We request comments regarding the possible benefits of the use of FM translators to provide fill-in service in such cases. Comments concerning this option also should consider the drawbacks of allowing cross-service authorizations, which would effectively serve to attract the audiences to the FM band.

58. Another difference noted by the Commission was the propagation difference that occurs in the AM band during nighttime hours. At night, transmitted signals in the AM band are in effect reflected from the ionosphere and are able to cause interference to other AM stations over great distances. Because it is limited by interference, the distance over which the primary signal of an AM station can be received during nighttime is considerably less than that during the daytime. Thus, direct off-the-air rebroadcast of an AM station by an FM translator at night would not likely be feasible in instances where the translator would be located at distances near the maximum daytime range of the AM station.

59. The use of FM translators by AM stations theoretically could resolve problems of nighttime reductions in service area many AM stations experience, particularly if the translators were permitted to be fed by signal delivery methods other than over-the-air delivery. However, we also note the concern expressed by the NAB's Board of Directors that use of FM translators to deliver AM programming could have adverse effects on the AM service. We seek comment on the issues discussed above and on the potential public interest benefits of permitting FM translator stations to rebroadcast the signals of AM stations.

60. Finally, commenters are invited to consider CGC's proposal to eliminate the current rule restricting FM translators to the 20 channels formerly authorized for Class A stations. We request comment on this proposal, which would allow translators to use all 80 commercial FM channels. We observe that our rules could be amended to permit the operation of translators on all 80 channels, whether or not we determine that the appropriate function of translator service should be expanded beyond its traditional role. We also request comment on La Tour's proposal to allocate translator stations in the same manner as we now do for full-service stations, albeit on a secondary basis, and whether such an approach would be practicable and would lead to efficient results.

61. Any action we might ultimately take to permit expanded FM translator operations could be expected to have an impact on Commission resources and our administrative procedures. This impact would be in the form of additional license processing and enforcement activity. Parties submitting specific proposals should consider the administrative costs of their plans and the possible effects on other programs within the Commission. Naturally, some policy alternatives would be easier to implement and require fewer administrative resources. Commenting parties should weigh implementation considerations and administrative costs against the merits of specific proposals.

*Interim Treatment of Applications*

62. Finally, we turn to procedural matters regarding the processing of FM translator applications during the pendency of this proceeding. Notwithstanding our disinclination to change the role of translators substantially, we are concerned that the volume of applications for FM translators could increase with the release of this Notice in anticipation that we might eventually permit these stations to readily convert from a rebroadcast service to stations authorized to originate programming. In order to avoid such an increase in requests for new FM translators or major changes to existing FM translator stations, which could overburden our processing resources and also could conflict with any policy changes we might make pursuant to the issues and proposals addressed herein, we are implementing a general "freeze" on the acceptance of applications for new FM translator stations or major changes to existing stations or permits pending our final action in this proceeding. We recognize that there are FM translator applications on file now awaiting action. We will continue to process and consider for grant any such application received by the Commission prior to the adoption of this Notice. Generally, we will not accept applications for new FM translators or major changes to existing stations or permits, either commercial or noncommercial, for assignment to the commercial FM band under this freeze. However, we will provide an exception to the general freeze on translator applications for new noncommercial, educational FM translators seeking assignment to the reserved frequency band (channels 200-220). This will permit the implementation of the noncommercial signal delivery technology rule change we are making today in *the Report and Order* in MM Docket No. 86-112.<sup>49</sup> We also will permit the filing of applications for stations that would be mutually exclusive with an application that is exempt from the freeze. In such cases, the competing application will also be exempt from the freeze. Existing applications on file and newly filed applications exempted from the freeze generally will be processed in accordance with the current procedures. However, any application currently pending or filed under one of the exceptions to the general freeze, against which a petition to deny is filed in accordance with Section 309(d)(1) of the Communications Act, raising issues regarding for-profit operation or unequal competition will be held pending resolution of this proceeding.<sup>50</sup>

**PROCEDURAL MATTERS**

63. Pursuant to applicable procedures set forth in 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before August 15, 1988, and reply comments on or before September 15, 1988. We wish to emphasize that, because of our desire to move quickly toward a rule making, we will be disinclined to grant extensions of time for filing comments and reply comments at this stage of the proceeding. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and five copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, Washington, D.C.

20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room (Room 239) of the Federal Communications Commission, 1919 M Street, N.W., Washington D.C. 20554.

64. This Notice of Inquiry is issued pursuant to authority contained in Sections 4(i) and 303 of the Communications Act of 1934, as amended.

65. In addition, IT IS ORDERED that the petition for waiver of Section 74.1231 of these rules for translator station K285CS filed by John Davidson Craver IS DENIED and that the petition for rule making of John S. La Tour IS DENIED to the extent indicated herein. Further, IT IS ORDERED that effectively immediately as of the close of Commission business on the day of adoption of this Notice of Inquiry, and until further notice, the Commission WILL NOT ACCEPT applications for new FM translator stations, except as provided herein above. Any translator application received by the Commission that is not acceptable due to this freeze will be returned, along with any accompanying filing fee, to the applicant.

66. For further information concerning this proceeding, contact Marcia Glauber, Policy and Rules Division, Mass Media Bureau, (202) 632-6302.

**FEDERAL COMMUNICATIONS COMMISSION**

H. Walker Feaster, III  
Acting Secretary

**APPENDIX****National Association of Broadcasters Petition (RM-5416)****Comments**

Multimedia, Inc.  
London Bridge Broadcasting, Inc.  
Tucson Broadcasters Association  
CBS Inc.  
Communications General Corporation  
KPSI Radio Corp.  
King Broadcasting Company, Inc.  
The Greenwich Broadcasting Corporation  
John J. Davis  
Arizona Broadcasters Association  
The Henry Radio Company of California  
Double Eagle Broadcasting  
Faith Communications Corp.  
Mars Hill Broadcasting Company, Inc.  
William Paxton Rogers  
John S. La Tour d/b/a J & J Broadcasting

**Reply Comments**

Communications General Corporation  
SBI, Inc. and Flint Chicago Associates  
National Association of Broadcasters

AGK Communications, Inc. Petition (RM-5472)

Comments

CBS Inc.

Cornell Radio Guild, Inc.

National Association of Broadcasters

FOOTNOTES

<sup>1</sup> See *Notice of Proposed Rule Making* in Docket No. 17159, 34 FR 761 (1969) and *Report and Order* in Docket No. 17159, 20 RR 2d 1538, 1540 (1970).

<sup>2</sup> Currently, there are 1,552 FM translators on-the-air and we have granted construction permits for another 457 translators. The current rules also recognize FM booster stations that are essentially co-channel FM translators operated within the predicted service contour of their primary station. Booster stations are authorized only to the licensee of the full-service station they rebroadcast. The Commission recently revised its FM booster rules to permit higher-power FM boosters and to permit them to rebroadcast signals received by any distribution technology the licensee deems suitable. See *Report and Order* in MM Docket No. 87-13, 2 FCC Rcd 4625 (1987). We will not address FM boosters in this Notice.

<sup>3</sup> The FM translator rules are set forth at 47 CFR §§74.1201-74.1284.

<sup>4</sup> The reservation of specific channels for Class A use by full-service FM stations was eliminated in the *First Report and Order* in MM Docket No. 86-144, 52 FR 8259 (1986). This action did not alter the restriction that commercial FM translators only are authorized to operate on those channels originally reserved for Class A use.

<sup>5</sup> 47 CFR §74.1235(a). Translators located east of the Mississippi River or within Zone I-A are limited to 1 watt power output, while translators throughout the remainder of the country may utilize 10 watts power output. As a rough approximation, 1 and 10 watt translators using omnidirectional antennas at a height of 100 feet can provide usable service to areas with radii of 8 kilometers and 16 kilometers, respectively. However, most existing translators employ directional antennas and are located on higher ground and thus serve larger geographic areas. Translators with 1 and 10 watts power output that operate in this manner typically, depending on their particular situations, can serve areas of 16 and 32 kilometers, respectively, from the transmitter site.

<sup>6</sup> 47 CFR §74.1203(a).

<sup>7</sup> In a separate action today, we are authorizing noncommercial educational FM station licensees to feed their owned and operated FM translators operating on reserved FM channels by any distribution technology the licensee deems suitable. See *Report and Order* in MM Docket No. 86-112, adopted March 24, 1988, FCC 88-125. Therein, we concluded that such changes in permissible input signal delivery to noncommercial translators would not be inconsistent with the supplemental and secondary role of FM translators and our overall FM allocations plan.

<sup>8</sup> A "primary station" is the full-service FM station retransmitted by a translator.

<sup>9</sup> Section 74.1231(g) of the rules provides that originations concerning emergency warnings of imminent danger are permitted provided they are no longer or more frequent than necessary to protect life and property.

<sup>10</sup> In 1974, in response to a petition for rule making filed by the NAB, the Commission considered tightening the translator rules to prohibit those translators which are not owned by the licensee of the primary station from operating within the 1 mV/m contour

of a full-service station. See *Notice of Proposed Rule Making* in Docket No. 19918, 44 FCC 2d 794 (1974). In proposing this rule change, the Commission indicated that it appeared that translators were being used for purposes other than to provide fill-in service or service to underserved areas. The Commission observed that the economics of FM radio permit the operation of full-service stations in many small communities, but that in such communities, the economic status of those stations is often marginal. Consequently, the Commission was concerned that where FM translators rebroadcast the programming of distant FM stations in small communities that are served by full-service FM stations, the translators could pose a threat to the viability of the local FM stations by fragmenting the limited audiences. *Id.* The Commission did not adopt its proposed increased restriction on translator use at that time, however, stating that the record did not indicate that the existing limitations on the operation or control of FM translators were inadequate. See *Memorandum Opinion and Order* in Docket No. 19918, 98 FCC 2d 35, 44 (1984). The Commission did, however, issue a *Guide to FM Translator Rules and Policies* at that time to emphasize the need for translator licensees and applicants to conform with the existing FM translator rules. See Public Notice, 55 RR 2d 1247 (1984).

<sup>11</sup> See 47 CFR §74.1232(d).

<sup>12</sup> AGK is the licensee of Station WAQX(FM), Manlius, New York.

<sup>13</sup> Craver is the licensee of FM Translator Station K285CS, North Houston/Spring, Texas.

<sup>14</sup> La Tour is the licensee of a number of FM translators.

<sup>15</sup> CGC is a consulting engineering firm.

<sup>16</sup> Robert Jacoby is an entrepreneur interested in providing a new type of service with FM translators.

<sup>17</sup> Sections 1.401 and 1.403 of the Commission's rules require that petitions for rule making either be dismissed or placed on Public Notice for public comment. However, the comments received in response to the Public Notices issued following the NAB and AGK submissions convince us that it is appropriate to initiate a proceeding to reexamine FM translator matters. Because we have concluded that an inquiry is the appropriate manner in which to proceed in this matter, we find that compliance with these procedures for the remaining petitions would serve only to prolong the course of this proceeding. Accordingly, we are dispensing with the Public Notice and comment cycle respect to the five remaining petitions and proceeding directly to the issuance of this Notice of Inquiry.

<sup>18</sup> In this regard, NAB specifically describes three methods of translator "daisy chaining" that it contends are possible under the current rules. These are: 1) the establishment of translators in areas devoid of population for use as relays; 2) the establishment of translators well beyond the community specified to be served for use as relays; and, 3) leaseback and advertising arrangements between independent translator licensees and primary stations.

<sup>19</sup> See 47 CFR §§74.1203(a) and (b).

<sup>20</sup> A list of the parties filing comments and replies to the NAB petition is provided in the Appendix.

<sup>21</sup> See 47 U.S.C. §307(b).

<sup>22</sup> See *Report and Order* in BC Docket No. 80-90, 48 FR 29486 (1983).

<sup>23</sup> This suggestion is essentially the same as the proposal submitted by CGC in its own petition, as described *infra* at para. 28.

<sup>24</sup> AGK notes that if this rule is deleted, then Section 74.1232(h) also should be deleted. Section 74.1232(h) provides that an authorization for a translator issued to an applicant described in subpart (d) is subject to the condition that it may be

terminated where the circumstances in the area served are so altered as to have prohibited grant of the application had such circumstances existed at the time the application was filed.

<sup>25</sup> See *Memorandum Opinion and Order and Further Notice of Proposed Rule Making* in Docket No. 19918, FCC 78-226 (released March 31, 1978).

<sup>26</sup> See 47 CFR §73.3555(d). Translators are not counted for purposes of the multiple ownership rules.

<sup>27</sup> See 47 CFR §73.3555(a).

<sup>28</sup> On October 30, 1987, Craver filed a request for a waiver of Section 74.1231 of the rules to allow his FM translator K285CS, North Houston/Spring, Texas, to exceed the 30 second per hour limit on program origination. He indicates that this waiver would allow K285CS to provide unique programming which is not otherwise available to listeners in its service area. Because translator program origination is an issue to be addressed in this proceeding and because we do not wish to prejudice our final determination thereon, we find it would be not appropriate to grant Craver's waiver request. Accordingly, we are denying Craver's request for waiver of Section 74.1321 of the rules.

<sup>29</sup> La Tour suggests that the current standards provided in Section 73.504 of our rules to protect Mexican Class D FM stations be used as a guideline for developing translator separation distances for domestic purposes. See 47 CFR §73.504.

<sup>30</sup> In this regard, our commitment to maximize the availability of FM service to the public through full-service stations has never wavered. This is perhaps best exemplified by the rule changes to increase the availability of full-service FM stations adopted in Docket No. 80-90. See *Report and Order* in Docket No. 80-90, *supra* note 22. The facilities that are being authorized pursuant to Docket No. 84-231 will provide primary FM service to many unserved and underserved areas and populations that otherwise could have received only those signals rebroadcast by translators. See *First Report and Order* in Docket No. 84-231, 100 FCC 2d 1332 (1985).

<sup>31</sup> See *Report and Order* in Docket No. 20735, 43 FR 39704 (1978). The Commission similarly maintained a secondary spectrum priority for the low-power television service. See *Report and Order* in BC Docket No. 78-253, 51 RR 2d 476 (1982). Our commitment to maximizing service to the public with the highest regard for efficient spectrum use and management also is demonstrated by our action in Docket No. 80-90, where we decreased the FM station minimum distance separations to increase the number of channel classes and FM allotments without risking co-channel or adjacent channel interference. See *Report and Order* in Docket No. 80-90, *supra* note 22.

<sup>32</sup> Accordingly, we are denying La Tour's petition to the extent that it proposes the authorization of translator operations on an equivalent basis with full-service stations.

<sup>33</sup> See *Report and Order* in BC Docket 79-219, *Deregulation of Radio*, 84 FCC 2d 968, 981 (1981).

<sup>34</sup> The coverage difference between translators and full-service stations may be less than one might imagine, however. Because we only limit transmitter output power, not effective radiated power, and do not restrict antenna height, translator coverage can be substantial. This is especially true in some mountainous western states. We also have encountered an increasing number of situations where applicants, through use of power splitters, multiple output amplifiers, and directional antenna arrays that are stacked and oriented to serve multiple communities or areas, can achieve a vastly enlarged service area, with primary coverage approaching that of some full-service stations.

<sup>35</sup> See *Report and Order* in Docket No. 17159, *supra* note 1, at para. 6.

<sup>36</sup> The minimum separation distances for FM stations provided in Section 73.209 of the rules reflect protection to the 0.5 and 0.7 mV/m contours for Class B and B1 stations, respectively. See *Report and Order* in BC Docket No. 80-90, *supra* note 22. In addition, our recent action authorizing high-power FM booster stations permits such stations to provide service to the 0.5 and 0.7 contours of Class B and B1 stations. See *Report and Order* in MM Docket No. 87-13, *supra* note 2.

<sup>37</sup> 47 U.S.C. §309(i). See also, *Selection From Among Certain Competing Applications Using Random Selection or Lotteries Instead of Comparative Hearings*, 48 FR 27182 (1983).

<sup>38</sup> See H.R. Rep. No. 765, 97th Cong., 2nd Sess. (1982).

<sup>39</sup> Although Section 74.1203(b) states that "[i]nterference will be considered to occur whenever reception of a regularly used off-the-air signal by viewers or listeners is impaired by the signals radiated by the translator, regardless of the quality of such reception," the rules do not prescribe a specific method for calculating interference among first, second, and third adjacent channel users. In practice, because FM translators, like noncommercial educational full-service FM stations, are allocated based on a showing that a proposed facility will not cause interference to any station, the staff uses specific contour computations (F(50,50) and F(50,10) curves), and ratios of undesired to desired signal strengths prescribed in Section 73.509 of the rules to estimate the potential for interference by FM translators. See 47 CFR §73.509.

<sup>40</sup> Section 73.207 sets forth the minimum separations standards between classes of FM stations. See 47 CFR §73.207.

<sup>41</sup> See *supra* note 39.

<sup>42</sup> See *Report on Frequency Modulation* in Docket No. 5805, 39 FCC 29 (1940).

<sup>43</sup> See 47 CFR §74.1203(a). See also *Memorandum Opinion and Order* in Docket No. 20735, 50 FR 27954, at note 6 (1985).

<sup>44</sup> Section 74.1235(a) of the rules set forth the power limitations for FM translators. See 47 CFR §73.1235(a).

<sup>45</sup> See *Report and Order* in MM Docket No. 86-112, *supra* note 7. We also are adopting today a *Further Notice of Proposed Rule Making* in that proceeding to consider extending the authority to use alternate signal delivery technology to all noncommercial educational FM translators operating on reserved channels. See *Further Notice of Proposed Rule Making* in MM Docket No. 86-112, adopted March 24, 1988, FCC 86-126.

<sup>46</sup> The booster rules were recently modified to permit signal delivery between a primary station and its booster facilities by any signal distribution technology the licensee deems feasible. See *Report and Order* in MM Docket No. 87-13, *supra* note 2.

<sup>47</sup> In our action in MM Docket No. 87-13 (high-power FM boosters) we have authorized use of broadcast auxiliary facilities on a secondary basis to deliver signals to FM booster stations. See *Report and Order* in MM Docket No. 87-13, *supra* note 2. We are considering a similar authorization for use of broadcast auxiliary facilities with noncommercial FM translators in MM Docket No. 86-112, also adopted today. (Alternate signal delivery technology use with noncommercial FM translators). See *Further Notice of Proposed Rule Making* in MM Docket No. 86-112, *supra* note 45.

<sup>48</sup> See e.g. *Memorandum Opinion and Order*, Docket 81-305, adopted June 30, 1981.

<sup>49</sup> See *supra* note 7.

<sup>50</sup> 47 U.S.C. §309(d)(1).

STATEMENT OF COMMISSIONER  
JAMES H. QUELLO

Re: Amendment of Part 74 of the Commission's Rules  
Concerning FM Translator Stations.

It is difficult to object to a procedure whereby an administrative agency is merely soliciting information concerning regulatory policy. I can support this *Notice of Inquiry* because it now displays a sensitivity to the negative effects resulting from an expansion of our commercial FM translator rules.<sup>1</sup>

My preferred position would be to draft a *Nouce of Proposed Rule Making* that looks towards tightening our existing translator rules. We have already received numerous comments in this proceeding documenting the need for strengthening our existing regulatory scheme. I believe we have a sufficient record to move forward now with a proceeding to tighten the rules. Nevertheless, a more general discussion of the potential adverse impact of an expanded FM translator service may be useful. As long as we proceed to strictly enforce our existing translator rules, then the time spent in discussing this issue may assist the Commission in establishing a more rational set of regulations. Therefore, I can support issuing the *Nouce of Inquiry* on this rather limited basis.

FOOTNOTE FOR STATEMENT

<sup>1</sup> At the meeting on March 25, 1988, adopting this *Nouce of Inquiry*, I withheld my vote until a complete draft was available.